

Notice of Hearing on Proposed Administrative Regulation

A public hearing will be conducted at 9 a.m. Wednesday, September 28, 2011 in Room 200, Jayhawk Walk, 714 S.W. Jackson, Topeka, to consider the adoption of proposed regulations of the State Board of Indigents' Defense Services on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Patricia A. Scalia, Executive Director, State Board of Indigents' Defense Services, 714 S.W. Jackson, Room 200, Topeka, 66603, or at pscalia@sbids.state.ks.us. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Patricia Scalia at pscalia@sbids.state.ks.us or at (785) 368-6295. The entrance to the Jayhawk Walk is accessible, and parking for persons with disabilities is in front of the building.

Copies of the proposed regulations may be obtained by contacting Patricia Scalia. A summary of the proposed regulations and the economic impact statement follows:

Updated Economic Impact Statement

The amendments to K.A.R. 105-4-2 and 105-4-3 will limit the number of persons who are eligible to receive indigent defense services. Eligibility is determined by the court after reviewing the defendant's affidavit listing his or her income and any assets as well as their living expenses and their dependents and comparing that information to the current federal poverty guidelines. Defendants whose income and liquid assets exceed the federal poverty guideline for their household size are ineligible for indigent defense services unless the court finds a special circumstance to allow eligibility.

The amendment to K.A.R. 105-11-1 is the annual update of the amount defendants must repay for their defense services. Overall, there is a slight increase in cost.

These regulation changes are proposed on both a temporary and permanent basis.

There is no cost associated with these amendments to this agency or any other government entity. There may be a cost to the consumers of this service – the defendants applying for eligibility, in terms of limiting eligibility. However, since the court may find special circumstances to allow eligibility, the proposing agency is unable to determine the cost of private attorney fees for those persons determined to be ineligible for services.

These regulations are available for review by the public at the Board's administrative office and are available electronically.

Patricia A. Scalia
Executive Director

105-4-1. Determination of eligibility. (a) At the commencement of proceedings against any defendant, the defendant may apply for legal representation at state expense by submitting, to the court, an affidavit of indigency on a form provided by the board. The court shall determine if the defendant is indigent, based upon consideration of the following factors, as defined in K.A.R. 105-4-2:

(1) The defendant's liquid assets;

(2) the defendant's household income;

(3) ~~either the defendant's actual, reasonable, and necessary expenses incurred to support the defendant's household or~~ the most current federal poverty guidelines, as published by the U.S. department of health and human services for the defendant's family unit;

(4) the anticipated cost of private legal representation; and

(5) any transfer of property by the defendant without adequate monetary consideration after the date of the alleged commission of the offense.

(b) An eligible indigent defendant shall mean a person whose combined household income and liquid assets equal less than the most current federal poverty guidelines, as published by the U.S. department of health and human services, for the defendant's family unit.

(c) The court may also consider any special circumstances affecting the defendant's eligibility for legal representation at state expense.

(d) If the court determines that the defendant is financially able to employ counsel after counsel has been appointed, the court shall require the defendant to reimburse the board in accordance with the provisions of K.S.A. 22-4510, and amendments thereto, for all or part of the expenditures made on the defendant's behalf. (Authorized by K.S.A. 22-4504 and K.S.A. 22-4522; implementing K.S.A. 22-4504 and K.S.A. 22-4510; effective May 1, 1984; amended, T-105-10-3-05, Oct. 3, 2005; amended Feb. 17,

2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended, T-

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105-4-2. Definition of terms. Terms used to determine eligibility for indigents' defense services shall have the following meanings: (a) Liquid assets. The defendant's liquid assets shall be defined as cash in hand, stocks and bonds, accounts at financial institutions, real property or homestead having a net value greater than \$50,000, and any other property that can be readily converted to cash, with the following exceptions:

(1) The defendant's car having a value of less than \$20,000, clothing, ~~and~~ household furnishings, and any personal property that is exempt from attachment or levy of execution by K.S.A. 60-2304, and amendments thereto; and

(2) any other property, except a homestead having a net value greater than \$50,000, ~~which~~ that is exempt from attachment or levy of execution by K.S.A. 60-2301, et seq., and amendments thereto.

The net value of the homestead shall be the fair market value less the mortgage, other encumbrances, and the reasonable cost of sale. The net value of any property transferred after the date of the alleged commission of the offense shall be included in the determination of the defendant's liquid assets.

(b) Household income. The defendant's household income shall be defined as the defendant's income and the income of all other persons related by birth, marriage, or adoption who reside with the defendant. Income shall include the total cash receipts before taxes from all resources, including money, wages, and the net receipts from nonfarm or farm self-employment. ~~Further,~~ Income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.

~~(c) The defendant's reasonable and necessary living expenses. A table shall be calculated by the board which establishes the amounts the board will allow as the defendant's reasonable and necessary expenses incurred to support the defendant and the defendant's household. The table of reasonable and necessary living expenses shall be revised by the board each time the federal poverty guidelines are revised and published in the federal register.~~

(d) Transfer of property.

(1) If the defendant has transferred property after the alleged commission of the offense, the court shall determine the reason for the transfer of property and whether adequate monetary consideration was received. If adequate monetary consideration was not received, the court shall presume that the transfer was made for the purpose of establishing eligibility unless the defendant furnishes clear and convincing evidence that the transfer was made exclusively for another purpose.

(2) If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration, and the property is reconveyed to the defendant or an adjustment is made by which the defendant receives full value, the defendant shall, if otherwise qualified, be eligible to receive legal representation at state expense. (Authorized by K.S.A. 22-4504 and 22-4522; implementing K.S.A. 22-4504; effective May 1, 1984; amended Nov. 1, 1996; amended, T-_____, _____; amended P-_____.)

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105-4-3. Affidavit of indigency. A standard format for an affidavit of indigency shall include the following information: (a) The defendant's liquid assets and household income;

(b) the defendant's household expenses;

(c) any extraordinary financial obligations of the defendant;

(d) the size of the defendant's household; and

(e) any transfer of property by the defendant after the date of the alleged commission of the offense;

~~(f) the board's table of reasonable and necessary living expenses; and~~

~~(g) the anticipated cost of private legal representation.~~

If the information provided by the defendant on the affidavit is unclear, incomplete, contradictory, or questionable, further inquiry may be conducted by the board, the court, the county or district attorney, or other officer assigned by the court. The affidavit of indigency forms shall be published and distributed annually to the judicial administrator and to the administrative judge of each district. (Authorized by K.S.A. ~~1983-Supp.~~ 22-4522; implementing K.S.A. ~~1983-Supp.~~ 22-4504; effective May 1, 1984; amended May 1, 1985; amended, T-_____, _____; amended P-_____.)

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105-11-1. Defendant reimbursement of attorney fees. The document titled “attorney cost reimbursement tables: assigned counsel and public defender,” as revised by the state board of indigents’ defense services on June 11, 2010 10, 2011, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522 (e); effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008; amended, T-105-6-26-09, June 26, 2009; amended Oct. 16, 2009; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended, T-_____, _____; amended P-_____.)

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